

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 23, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1259  
STATE OF WISCONSIN**

**Cir. Ct. No. 2007CF50**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**  
  
**PLAINTIFF-RESPONDENT,**  
  
**V.**  
  
**JASON LEE EDMONSON,**  
  
**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Outagamie County:  
DEE R. DYER, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve  
Judge.

¶1 PER CURIAM. Jason Edmonson appeals an order denying his WIS. STAT. § 974.06 (2011-12),<sup>1</sup> motion for postconviction relief. Edmonson raises

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

several challenges to his conviction. We conclude Edmonson's arguments have either already been litigated or are procedurally barred. The order is therefore affirmed.

### **BACKGROUND**

¶2 In March 2009, Edmonson was convicted upon a jury's verdict of first-degree sexual assault of a child under the age of thirteen, felony bail jumping and misdemeanor bail jumping. The court imposed consecutive sentences totaling forty-eight and one-half years, consisting of twenty-five and one-half years' initial confinement followed by twenty-three years' extended supervision. On direct appeal, Edmonson's appointed counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there was no arguable basis to challenge Edmonson's convictions. The no-merit report addressed the sufficiency of the evidence, some evidentiary rulings and the sentence imposed.

¶3 Edmonson filed a response challenging his detention by police and the search of his house. Edmonson also alleged prosecutorial misconduct and claimed he was denied the effective assistance of trial counsel. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we concluded there was no arguable basis for appeal and summarily affirmed the judgment.

¶4 In March 2012, Edmonson filed the underlying WIS. STAT. § 974.06 motion for a new trial, again challenging the legality of his arrest and the seizure of property from his home. The motion also raised several ineffective assistance of counsel claims and made conclusory assertions that the court rendered judgment without jurisdiction and imposed a sentence "not authorized by law." The motion was denied without a hearing and this appeal follows.

## DISCUSSION

¶5 We conclude Edmonson’s claims are barred by WIS. STAT. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why the newly alleged errors were not previously raised. *Escalona-Naranjo*, 185 Wis. 2d at 185. The bar to serial litigation may also be applied when the direct appeal was conducted pursuant to the no-merit procedures of WIS. STAT. RULE 809.32. *State v. Tillman*, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574; *see also State v. Allen*, 2010 WI 89, ¶¶35-41, 328 Wis. 2d 1, 786 N.W.2d 124. Absent a sufficient reason for doing so, a defendant may not raise issues in later proceedings that could have been raised in the no-merit proceeding if the no-merit procedures were followed and the court has sufficient confidence in the outcome of the no-merit proceeding to warrant application of the procedural bar. *Allen*, 328 Wis. 2d 1, ¶62.

¶6 Edmonson has not demonstrated that his no-merit appeal was procedurally inadequate, and our resolution of the no-merit proceeding carries a sufficient degree of confidence warranting application of the procedural bar. Although Edmonson was not required to file a response to his counsel’s no-merit report, he did. The underlying WIS. STAT. § 974.06 motion raises several of the same claims that were rejected in the no-merit appeal. Arguments addressed in that appeal cannot be relitigated now. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).

¶7 With respect to any claims not raised in the context of his no-merit appeal, Edmonson contends that the ineffectiveness of his postconviction counsel constitutes a sufficient reason for failing to raise his claims earlier.<sup>2</sup> Motions containing only conclusory and legally insufficient allegations that postconviction counsel was ineffective are not sufficient reasons to circumvent *Escalona*'s procedural bar. *Allen*, 328 Wis. 2d 1, ¶¶84-87. To the extent Edmonson intimates that postconviction counsel was ineffective for failing to assert trial counsel's ineffectiveness, he must first establish that trial counsel was ineffective. *See State v. Ziebart*, 2003 WI App 258, ¶15, 268 Wis. 2d 468, 673 N.W.2d 369 (to establish ineffectiveness of postconviction counsel, a defendant bears burden of proving trial counsel's performance was both deficient and prejudicial).

¶8 The only challenge to trial counsel's performance not specifically addressed in Edmonson's no-merit appeal is his claim that counsel "encouraged, pressured, and persuaded [him] to commit perjury when he testified, by counseling him to not tell the truth about what happened and preventing him from presenting exculpatory evidence to the jury." This conclusory allegation is insufficient to establish the ineffectiveness of trial counsel; therefore, Edmonson's derivative challenge to the effectiveness of his postconviction counsel fails. Because Edmonson has not offered a sufficient reason for failing to raise his new arguments earlier, they are procedurally barred.

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<sup>2</sup> Edmonson's WIS. STAT. § 974.06 motion also asserted he was denied the effective assistance of appellate counsel. A challenge to the effectiveness of appellate counsel, however, is properly raised by a petition for a writ of habeas corpus in this court. *See State v. Knight*, 168 Wis. 2d 509, 512-13, 484 N.W.2d 540 (1992). Even on the merits, Edmonson's conclusory challenge to the effectiveness of his appellate counsel does not establish a sufficient reason for circumventing the procedural bar to his claims.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5.

